



4310-K6

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Draft Program Comment for Extending the Duration of Programmatic Agreements based on the Department of Energy Prototype Programmatic Agreement for its Weatherization Assistance Program, State Energy Program, and Energy Efficiency and Conservation Block Grant

AGENCY: Advisory Council on Historic Preservation

ACTION: Notice of Intent to Issue Program Comments for Extending the Duration of Programmatic Agreements based on the Department of Energy (DOE) Prototype Programmatic Agreement for its Weatherization Assistance Program (WAP), State Energy Program (SEP), and Energy Efficiency and Conservation Block Grant (EECBG).

SUMMARY: The Advisory Council on Historic Preservation (ACHP) is considering issuing a Program Comment for the DOE that would continue its program of tailored compliance with Section 106 of the National Historic Preservation Act for the Office of Weatherization and Intergovernmental Programs Weatherization Related Grant Programs: WAP, SEP, and EECBG.

The ACHP seeks public input on the proposed Program
Comment.

DATES: Submit comments on or before 5:00 pm EST, March 1,
2013.

ADDRESSES: Address all comments concerning this proposed
Program Comment to Lee Webb, Office of Federal Agency
Programs, Advisory Council on Historic Preservation, 1100
Pennsylvania Avenue, N.W., Suite 803, Washington, DC 20004.
You may also submit comments via fax at (202) 606-8647 or
via electronic mail at lwebb@achp.gov.

FOR FURTHER INFORMATION CONTACT: Lee Webb, (202) 606-8583,
lwebb@achp.gov.

SUPPLEMENTARY INFORMATION: Section 106 of the National
Historic Preservation Act requires federal agencies to
consider the effects of their undertakings on historic
properties and to provide the ACHP a reasonable opportunity
to comment with regard to such undertakings. The ACHP has
issued the regulations that set forth the process through
which Federal agencies comply with these duties. Those

regulations are codified under 36 CFR part 800 (Section 106 regulations).

Under Section 800.14(e) of those regulations, agencies can request the ACHP to provide a "Program Comment" on a particular category of undertakings in lieu of conducting individual reviews of each individual undertaking under such category, as set forth in 36 CFR 800.4 through 800.7. An agency can meet its Section 106 responsibilities with regard to the effects of particular aspects of those undertakings by taking into account ACHP's Program Comment and following the steps set forth in that comment.

I. Background

The DOE's Office of Weatherization and Intergovernmental Programs (OWIP) provides financial assistance to state agency applicants for three weatherization related grant programs: WAP, SEP, and EEBG. DOE has determined that activities carried out by these funded programs constitute undertakings with the potential to affect historic properties. Therefore, DOE must comply with Section 106 and its implementing regulations for these undertakings.

The ACHP and DOE began a partnership in August 2009 to explore possible program alternatives to tailor the Section

106 process for these undertakings in anticipation of the dramatic increase in project funding as a result of American Recovery and Reinvestment Act. DOE, in consultation with the ACHP and the National Conference of State Historic Preservation Officers, developed a prototype Programmatic Agreement (PA) to cover three weatherization related grant programs and to create efficiencies in the administration of these OWIP grants: WAP, SEP, and EECBG. The prototype PA identifies a category of routine undertakings with limited potential to affect historic properties and exempts them from further review. The ACHP's Chairman designated the prototype PA on February 8, 2010. Under the terms of the prototype PA, DOE, the SHPO, and the relevant state agency receiving OWIP grants can execute subsequent agreements without ACHP involvement. Execution of an agreement pursuant to the prototype PA presumes that DOE will conduct its government-to-government consultation responsibilities with federal recognized Indian tribes and its Section 106 consultation requirements with Native Hawaiian organizations. If DOE is notified that a particular undertaking may result in an adverse effect on historic properties of religious and cultural significance to Indian tribes or Native Hawaiian organizations, DOE must

invite such Indian tribes or Native Hawaiian organizations to participate in consultation for the affected project.

Since its designation, DOE has used the prototype PA to successfully negotiate and execute 44 programmatic agreements with SHPOs and state agencies receiving DOE OWIP grants. DOE's direct recipients may use the executed state agreement developed under the prototype PA as well. The ACHP provided guidance and technical assistance to DOE Project Officers and SHPOs during the negotiation and subsequent implementation of the agreements, for example, assisting in the determination of appropriate treatments and mitigation for individual projects that resulted in adverse effects.

In the past year, DOE and the ACHP have discussed how to extend and build upon the program established by the prototype PA. As part of this effort, the ACHP, with DOE's participation, hosted a series of listening sessions for SHPOs. The ACHP will also provide an opportunity for SHPOs, tribes, Native Hawaiian organizations, and state agencies an opportunity to comment. The 44 agreements executed under the prototype PA have different expiration dates. Several of the agreements will expire in mid-March 2013. While the prototype PA originally proposed a three year duration clause for these agreements, it is now DOE's and

the ACHP's intention that these agreements should extend beyond this three year term.

This Program Comment proposes to extend the duration of the existing 44 agreements executed under the prototype PA until December 31, 2020, and provide the same duration period for any future agreements that may be executed under the prototype PA. Nothing in this Program Comment would alter or modify any other provisions of the prototype PA or the 44 agreements, including the ability of the parties to amend or terminate an executed agreement prior to the expiration date.

II. Expected Benefits

As a result of the partnership with ACHP and the development and the administration of the prototype PA, DOE established internal and external training; recognized best management practices; and utilized DOE guidance and directives to ensure that the DOE weatherization programs were properly implemented in compliance with Section 106. The prototype PA established review efficiencies and protocols which allowed for the grant programs to expedite the weatherization efforts of the homes of many low income individuals across the country, as well as assisted

communities in funding energy efficiency, renewable energy, and weatherization projects for public buildings such as schools and courthouses. Due to the success of the prototype PA for DOE's weatherization programs, other departments within DOE have sought ACHP's and OWIP staff's guidance and direction for meeting their historic preservation compliance responsibilities.

The proposed Program Comment would build upon and extend the success of the prototype PA and continue the DOE's program of tailored, efficient compliance with Section 106. Once the public comments resulting from this notice are considered, and edits are incorporated as deemed appropriate, the ACHP will decide whether to issue the Program Comment. The ACHP expects to make that decision in mid-March 2013.

III. Text of the proposed Program Comment

The following is the text of the proposed Program Comment:

I. Establishment and Authority

This Program Comment was issued by the ACHP on March 2013 pursuant to 36 CFR 800.14(e).

II. Date of Effect

This Program Comment went into effect on March 2013.

III. Use of this Program Comment to Extend the Duration of the Existing Agreements Executed under the DOE Prototype PA and for New Agreements Executed pursuant to the Prototype PA

The DOE may continue, through December 31, 2020, complying with its responsibilities under Section 106 of the National Historic Preservation Act for its Weatherization Assistance Program (WAP), State Energy Program (SEP), and Energy Efficiency and Conservation Block Grant (EECBG) in the relevant States using the 44 agreements currently executed, and those to be executed, under the "Prototype Programmatic Agreement between the United States Department of Energy, the State Energy Office and the State Historic Preservation Office regarding EECBG, SEP and WAP Undertakings," designated by the ACHP on February 8, 2010, regardless of the duration clause of those agreements. However, if any of those agreements gets terminated under its own terms, DOE may no longer use it to comply with its Section 106 responsibilities in the relevant State. This will provide continuity in the Section 106 review for those undertakings covered by the existing and any new agreements executed under the prototype PA. This Program Comment does not alter or modify any

provisions of the prototype PA or the 44 executed agreements other than their duration clauses.

IV. Amendment

The ACHP may amend this Program Comment after consulting with DOE, NCSHPO, and other parties as appropriate, and publishing notice in the Federal Register to that effect.

V. Sunset Clause

This Program Comment will terminate on December 31, 2020, unless it is amended to extend the period in which it is in effect.

VI. Termination

The ACHP may terminate this Program Comment by publication of a notice in the Federal Register thirty (30) days before the termination takes effect.

Authority: 36 CFR 800.14(e)

Dated: February 19, 2013

John M. Fowler,

Executive Director

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